No. 10783

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

ELMER H. MATEAS,

Appellant,

vs.

FRED HARVEY, a corporation,

Appellee.

APPELLANT'S REPLY BRIEF.

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A mule need not have a bad reputation during past years, in order for its owner to be liable for the incorrect actions of that same mule—provided, of course, these actions are brought to the attention of the owner (or his agent), before the actual injury happens.

The guide, Bob Ennis, had been familiar with the mules on the Bright Angel trail since he was three years old—or for 15 years. He was mule wise. He must have known that the restiveness of the mule "Chiggers", when it was trying to force itself in front of the other mules (whether "straggling" or "struggling" doesn't make much difference, for the logic of it) would lead to other notions, and motions, of this same rule. He DID know APPELLANT was a wholly inexperienced rider, and one whom it was his duty to protect to the utmost.

He DID know Appellant was trying to protect himself by taking another mule, which was a safe one. Ennis DID know—or should have known—that it was unsafe to compel Appellant to resume his ride on the same mule under these circumstances.

Ennis was the boss of the outfit. He was the guide, the leader. He was the one person responsible for the safety of those under his charge. He was the representative of Appellee.

He required Appellant to remain on the same mule. What else could Appellant do? What did he know about mules? Wasn't it incumbent upon him to believe in and rely upon the supposed knowledge of the guide? Who else was there to give him mule knowledge, or to provide for his safety? On whom else was he to rely if not on the guide—in whose care he had been placed?

Of all the thousands of inexperienced riders handled by Appellee, should Appellant consider he was receiving any less degree of protection—that he, of all the thousands, was the only one to be placed in jeopardy?

Prithee, what would Appellee have Appellant do under such circumstances? Should he refuse to go on, and sit by the trail-side, like a pouting boy? Should he wait until someone came down or up, to take him down, or up, on some other conveyance? Explaining to them that he, Appellant—totally inexperienced knew, or thought he knew more about mules than Appellee's representative—the guide, and Appellant demanded another conveyance. Evi-

dently there wasn't any other conveyance, as his "hospital ship" was the rolling back of another mule.

He wouldn't be allowed to ride any other mule!

What was he to do? He must either walk back, or sit still, or continue as he was told to do. Hadn't he a right to trust the wisdom of the guide? Shouldn't he believe the guide knew his mules; knew them to be safe: and appellee knew their employee, and knew him to be a safe person in whose charge to place inexperienced riders, year after year? In spite of the already developed peculiarity of this particular mule, shouldn't Appellant still trust in the guide's implied promise of safety? Shouldn't he comply with the guide's orders? Either amounted to the same result—the injury.

How can Appellee say it did not hold itself out to the world as an insurer of the safety of those excursionists?

When I am afraid of an animal, and have been placed in peril by its actions, and the man in charge of it tells me that I MUST ride that particular beast—how can he say he is not responsible for the result which came from his defective knowledge of the beast, or from his lack of care?

One should not be permitted to escape responsibility when he compels me to enter upon a course of conduct which is dangerous, and which he knows, or should know, is dangerous to me, and which but a moment before showed signs of danger.

The actions of this particular mule during the excursion trip going down, were brought especially to the attention of Appellee, by Appellant. From that moment, Appellee became responsible for whatever injury flowed from the actions of this mule.

Even if this should not be sufficient, then Appellee impliedly guaranteed the absolute safety of Appellant, by reason of the advertisement in which Appellant stated that thousands of inexperienced riders had ridden these mules, along these trails, in perfect safety.

We submit:

The judgment should be reversed, and Appellee required to put in its proof, if any it has.

Respectfully submitted,

WALTER GOULD LINCOLN,
Attorney for Appellant.